A **NABILAH MOHAMAD ZAWAHID v. JOHN/JANE DOE 1 & ORS**

HIGH COURT MALAYA, IPOH
ANSELM CHARLES FERNANDIS JC
[CIVIL APPEAL NO: AA-12A-4-01-2019]
14 AUGUST 2019

B

CIVIL PROCEDURE: *Pleadings – Amendment – Application for – Amendment to statement of claim – Amendment to substitute names of defendants – Defendants initially cited as John/Jane Doe in statement of claim due to unknown identities – Plaintiff sought to amend and substitute names of defendants from John/Jane Doe to actual names upon finding out identities – Whether amendment necessary – Whether amendments would change body of statement of claim – Whether application bona fide – Whether defendants would be prejudiced if amendment allowed – Rules of Court 2012, O. 20 r. 1*

C

D ***LIMITATION:*** *Public Authorities Protection Act 1948 – Section 2(a) – Action against public authority – When cause of action arose – Whether action brought within time frame of 36 months as statutorily provided – Whether action time-barred*

E After suffering from an open fracture right humerus caused by an accident, the plaintiff underwent an operation at Hospital Raja Permaisuri Bainun, Ipoh, Perak, which involved a procedure known as 'iliac and synthetic bone grafting', performed by five doctors ('first operation'). In a follow up treatment at the same hospital, it was discovered that the plaintiff had a 'reduced sensation over ulnar distribution'. The plaintiff was referred to

F Hospital Kuala Lumpur where she was diagnosed with 'right ulna nerve absent' and had to undergo a second operation at Hospital Selayang. The plaintiff made minimal recovery and according to her, she (i) endured pain and suffering in both operations; (ii) was in good health before the first operation; and (iii) lost the use of her hand. The plaintiff commenced an action at the Sessions Court, alleging (i) negligence by the first to fifth

G defendants; and (ii) vicarious liability on the part of the sixth to eighth defendants for the negligence of the first to fifth defendants. Since the plaintiff had no knowledge of the identities of the five doctors involved in the first operation, the first to fifth defendants were respectively cited as 'John/Jane Doe 1 to 5' in her statement of claim. The defendants filed their statement

H of defence without naming the five doctors. The plaintiff proceeded to apply for discovery under s. 36 of the Government Proceedings Act 1956 ('GPA') for the names of the doctors involved in the first operation. However, the discovery application was withdrawn before it was heard as the plaintiff was supplied with the names by the Attorney General's Chambers ('AGC'). The

I plaintiff then applied to amend her statement of claim, pursuant to O. 20 r. 1 of the Rules of Court 2012, to replace the defendants respectively cited

as 'John/Jane Doe 1 to 5' with their actual names ('application'). The Sessions Court dismissed the application on the grounds that (i) the application exceeded the 36 months specified in s. 2(a) of the Public Authorities Protection Act 1948 ('PAPA'); (ii) the plaintiff's cause of action arose on 2 April 2015 when the first operation was performed and the last date in which amendments should have been applied for was 2 April 2018; (iii) as the application was only made on 8 November 2018, the plaintiff was out of time by about seven months and was therefore time-barred; (iv) the plaintiff was in breach of ss. 5 and 6(2) of the GPA in failing to name the first to fifth defendants personally and, as such, no neglect or default would have lain against those defendants concerned; (v) naming the first to fifth defendants as 'John/Jane Doe 1 to 5' was insufficient to make the sixth to eighth defendants vicariously liable. Hence, the present appeal. In support of her appeal, the plaintiff asserted that (i) the application was *bona fide* and any prejudice to the defendants could be compensated by costs; and (ii) the amendments would not, in effect, substitute one party for another or add another party nor turn the action from one character into an action of another and inconsistent character.

Held (allowing appeal):

(1) The present action was filed on 2 April 2018. The cause of action arose on the date of the first operation *ie*, 2 April 2015. According to the PAPA, the time frame for bringing an action against any public authority is 36 months. Based on the facts, the 36 months would have ended on 1 April 2018 which fell on a Sunday. By virtue of s. 54(1)(b) of the Interpretation Acts 1948 and 1967, if the last day falls on a public holiday, the following day would be the last day. It was undisputed that the writ and statement of claim was filed within the 36 months. (para 28)

(2) The use of 'John Doe' in its functional sense had been used in Malaysia in previous cases. The use of 'John Doe' for the first to fifth defendants was proper and correct. The plaintiff had to apply for discovery, under s. 36 of the GPA, to obtain the names of the doctors. It was only after this that the defendants, through the AGC, decided to reveal the names of the five doctors. The plaintiff, therefore, had to bring the 'John/Jane Doe' fiction and commence this action in order to obtain the identity of the doctors. The amendment only entailed the substitution of the names of the parties; it did not entail any change to the body of the statement of claim nor involved the addition of a new party or raised a new cause of action. The application was *bona fide* and there was no prejudice to the defendants if the amendments were to be allowed. (paras 26, 27, & 37)

(3) The whole purpose of the application to amend the statement of claim by substituting the 'John/Jane Doe' with the proper recently discovered identity of the doctors was to ensure that the plaintiff did not run foul to ss. 5 and 6 of the GPA. The plaintiff would be unjustly deprived of presenting its case on its merits if the application was disallowed. The amendment was necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon on its merits. (paras 30, 35 & 38)

Case(s) referred to:

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics 1971 U.S Lexis 23 ***(refd)***

Cameron (Respondent) v. Liverpool Victoria Insurance Co Ltd (Appellant) [2019] 2 All ER (Comm) 467 ***(refd)***

Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal [2015] 8 CLJ 1 FC ***(refd)***

John Doe v. Peng Yong [1997] 3 CLJ Supp 345 HC ***(refd)***

Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC ***(refd)***

Liff v. Peasley & Anor [1980] 1 All ER 623 ***(refd)***

Mohammad Hasri Ramle lwn. John Doe [2012] 1 LNS 742 HC ***(refd)***

Nur Islam Rahmatullah & Anor v. Personal Representative of Lim Eng Hock, Deceased [2017] 1 LNS 572 HC ***(refd)***

Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 6 CLJ 245 FC ***(refd)***

Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors [1983] 1 CLJ 191; [1983] CLJ (Rep) 428 FC ***(refd)***

Legislation referred to:

Government Proceedings Act 1956, ss. 5, 6(2), 36
Interpretation Acts 1948 and 1967, s. 54(1)(b)
Public Authorities Protection Act 1948, s. 2(a)
Road Transport Act 1987, s. 96(3)
Rules of Court 2012, O. 20 r. 1

For the appellant - R Norhajjah Raja Ahmad Shaari Ramozan; M/s Intan Ridzuwan Raja Norhajjah & Co
For the respondents - Husni Fairos Ramy; SFC

[Editor's note: Appeal from Sessions Court; Civil Suit No: AA-B53KP-1-04-2018.]

Reported by Najib Tamby

JUDGMENT

Anselm Charles Fernandis JC:

Introduction

[1] This is an appeal by the plaintiff against the decision of the learned Sessions Court Judge in dismissing the plaintiff's application to amend their statement of claim to substitute the first to the fifth defendants who are named as John/Jane Doe with that of Dr AidiI Yana binti Mohamad Sahlan,

Dr Tan Yong Lin, Dr Hazwan bin Ahmad Shushami, Dr Mohd Hazrul Hazwan bin Badrul and Dr Tham May Wan respectively. The application was made under O. 20 r. 1 Rules of Court 2012.

[2] The plaintiff asserts that its application conformed to the requirements laid down in the Federal Court case of *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors* [1983] 1 CLJ 191; [1983] CLJ (Rep) 428; [1983] 1 MLJ 213 read in the light of *Hong Leong Finance Bhd v. Low Thiam Hoe & Another Appeal* [2015] 8 CLJ 1; [2016] 1 MLJ 301. In other words, the applications are made *bona fide*. Any prejudice caused to the defendants can be compensated by costs. The amendments would not in effect substitute one party for another or add another party nor turn the action from one character into an action of another and inconsistent character.

Background Facts

[3] The parties will be known as they were in the Sessions Court. The plaintiff, a medical doctor, had met with an accident on 2 January 2015. She suffered an open fracture right humerus.

[4] On 1 April 2015, she underwent an operation namely "bone graft of right humerus" at the Hospital Raja Permaisuri Bainun Ipoh, Perak. The operation involved the procedure called "iliac and synthetic bone grafting" performed by the first to the fifth defendants. This will be referred as the "first operation". This resulted in an "iatrogenic ulnar nerve alvulsion". The "ulnar nerve cut" was treated and the plaintiff was allowed to be discharged on the April 2018 by the first to fifth defendants.

[5] On 14 April 2015, there was follow-up treatment at the Hospital Raja Permaisuri Bainun. The plaintiff was found to have a "reduced sensation over ulnar distribution." The plaintiff was then referred to the Hospital Kuala Lumpur and was diagnosed as "right ulna nerve absent".

[6] On 4 May 2015, the plaintiff had to undergo a second operation in respect of the "anterior interosseous nerve" (AIN). This operation was carried out at the Hospital Selayang. Thereafter a "nerve conduction study" (NCS) was performed on the plaintiff. A further follow-up on 27 January 2016 showed that the plaintiff had made minimal recovery. She had endured pain in both operations.

[7] The plaintiff claims that she was in good health before the "ulnar nerve cut" in the first operation. She had since experienced pain and suffering as a result of the cut. She also stated that she had lost the use of her hand.

[8] The plaintiff therefore alleged negligence on the part of the first to the fifth defendants. The sixth to the eight defendants were vicariously liable for the negligence of the first to fifth defendants.

[9] The plaintiff had commenced action against the defendants by filing the writ and statement of claim on 2 April 2018. The plaintiff's claim was registered as Civil Action AA-B53KP-1-04/2018 in the Sessions Court.

[10] The first to the fifth defendants were cited as "John/Jane Doe" 1 to 5. This was because the plaintiff lacked knowledge as to the identities of the doctors in the operating theatre involved in the first operation. It was however stated in the statement of claim that the first to the fifth defendants were providing medical services to the public at the Hospital Raja Permaisuri Bainun, Ipoh Perak and were involved in the first operation. The first to fifth defendants were described together with the role they played in the statement of claim at paras. 2, 6 and 7 as follows:

> 2. Defendan Pertama-Kelima adalah agen/pengkhidmat Defendan Keenam, Ketujuh dan Kelapan yang ditugaskan menyedia dan memberi perkhidmatan perubatan kepada orang awam yang beralamat di Hospital Raja Permaisuri Bainun, Jalan Hospital, 30990 Ipoh, Perak.
>
> 6. Plaintif pada setiap masa yang material merupakan seorang pesakit yang dirawat oleh Defendan-Defendan Pertama-Kelima di premis Defendan Keenam. Plaintif telah mengalami "open fracture right humerus" akibat kemalangan pada 2 Januari 2015. Pada 1 April 2015 Plaintif telah dimasukkan ke Hospital Raja Permaisuri Bainun untuk melalui satu pembedahan "bone graft of right humerus".
>
> 7. Plaintif telah dibedah "illiac and synthetic bone grafting" oleh defendan-defendan Pertama-Kelima pada 2/4/2015 (selepas ini dirujuk sebagai "pembedahan pertama") dan terjadi "iatrogenic ulnar nerve alvusion". "Ulnar nerve cut" tersebut telah dibaiki dan plaintif telah dibenarkan pulang pada 4 April 2015 oleh defendan-defendan Pertama-Kelima dari dalam jagaannya dan juga dari jagaan Defendan Keenam (sebagai hospital di mana pembedahan dilangsungkan).

[11] The defendants filed their statement of defence on 26 June 2018. The defendants however did not name the first to the fifth defendants in their statement of defence.

[12] The plaintiff was supplied with the handwritten note entitled "Department of Surgery, Hospital Ipoh, post-operative notes" (post-operative notes). From the post-operative notes the plaintiff could not determine the identities and the roles played of those in connection with the first operation. A copy of the handwritten post-operative notes is shown at p. 10 of the Rekod Rayuan in encl. 2. This was the only document supplied to the plaintiff.

[13] The plaintiff then had to apply for discovery under s. 36 of the Government Proceedings Act 1956 for the names of the doctors involved in the first operation. The discovery application was to be heard on 13 November 2018.

[14] It was only on 8 November 2018 that the plaintiff received a letter of the same date from the Attorney General's Chambers Civil Division. The letter stated that those were the doctors which were directly involved in the treatment and operation of the plaintiff on 2 April 2015. After this letter, the discovery proceedings were then withdrawn by the plaintiff.

[15] On 8 November 2018, itself the plaintiff made an application to amend the statement of claim to replace the defendants cited as "John/Jane Doe" with that of Dr AidiI Yana binti Mohamad Sahlan, Dr Tan Yong Lin, Dr Hazwan bin Ahmad Shushami, Dr Mohd Hazrul Hazwan bin Badrul and Dr Tham May Wan as the first to fifth defendants respectively.

[16] The learned Sessions Judge dismissed the plaintiff's application to amend the statement of claim on 18 January 2019. Hence this appeal.

The Decision Of The Sessions Court

[17] The learned SCJ found that the plaintiff's application to amend the writ and statement of claim to add the defendants was against s. 2 of the Public Authorities Protection Act 1948. Section 2 reads as follows:

> **Protection Of Persons Acting In Execution Of Statutory Or Other Public Duty**
>
> 2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect:
>
> (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof;
>
> (c) ...

[18] The learned SCJ was of the view that the application for amendment had exceeded the 36 months as specified in s. 2(a) above. She was of the opinion that the cause of action arose on the day the first operation was performed on 2 April 2015. The last date in which the amendments should have been applied for was 2 April 2018. As the application was only made on 8 November 2018 the plaintiff was out of time by about seven months in filing the application and was therefore time barred. For this proposition the learned SCJ relied on *Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 6 CLJ 245.

[19] The learned SCJ had also found that the plaintiff was in breach of ss. 5 and 6(2) of the Government Proceedings Act 1956 in failing to name the first to the fifth defendants personally. As such no neglect or default would have lain against those defendants concerned. It follows that naming the first to fifth defendants as "John/Jane Doe" 1 to 5 was not sufficient to make the sixth to eight defendants variously liable. For ease of reference, ss. 5 and 6 are reproduced below:

Liability Of The Government In Tort

5. Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

Limits Of Liability Of The Government

6. (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

(3) ...

...

The learned SCJ also cited the Federal Court case of *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663 to support this contention.

The Use Of "John/Jane Doe"

[20] It would be proper for this court to first deal with the appropriateness of the plaintiff naming the first to the fifth defendants as "John/Jane Doe". To reiterate, the purpose these fictional names were used was because at the point of filing the writ and statement of claims the plaintiff did not know the identities of the medical officers who were involved in the first operation on her.

[21] According to the affidavit in support affirmed on 8 November 2018 the post-operative notes obtained earlier were inadequate to reveal who the medical officers were. It was in those circumstances that the plaintiff decided to use the legal fiction of "John/Jane Doe". It was only after applying for discovery and receiving a letter from the Jabatan Peguam Negara dated 8 November 2018 were the identities of those involved in the first operation were revealed.

[22] The fiction "John Doe" had been used in several cases before this. In *John Doe v. Peng Yong* [1997] 3 CLJ Supp 345 it was used when suing a fictional defendant where the intended defendant, a motorcyclist, could not be traced. Low Hop Bing J (as he then was) in explaining and justifying the use of this fiction stated succinctly:

> ... the legal fiction of John Doe was very much a part of the English legal history and history of the English legal system, which constitute essential and integral component parts of the whole gamut in the studies of law ...
>
> Hence, e.g., in the *Chambers Twentieth Dictionary* New Edn., 1983, under "Doe", it was explained that "John Doe" and "Richard Doe" were imaginary plaintiff and defendant in the old legal action for ejectment "John Doe" also received a clear explanation in *Osborn's Concise Law Dictionary* 7th Edn, 1983, p. 123, as one of the fictitious names, the other being Richard Doe, for the purposes of playing the role as plaintiff or defendant e.g. in the old action of ejectment.
>
> In the instant case, the essential conditions for the filing of summons, based on negligence arising out of motor vehicle accident, are present *viz*, there was a correct identified motorcycle, a rider who had escaped; insurers who at all material times had not filed a declaration to avoid liability under the insurance policy and a cause of action in tort.
>
> Hence, the insurers were legally bound to meet the claim of the successful plaintiff.
>
> In the circumstances, as stated above, I am of the view that citing the legal fiction of John Doe as the defendant is a proper and correct mode and is hereby upheld.

[23] In *Nur Islam Rahmatullah & Anor v. Personal Representative of Lim Eng Hock, Deceased* [2017] 1 LNS 572 "John Doe" was used in suing an unidentified motorcycle rider. The court held that the use of this fiction is sufficient to attach liability against insurer or owner of the vehicle unless liability is avoided pursuant to s. 96(3) of the Road Transport Act 1987. Please see also *Mohammad Hasri Ramle lwn. John Doe* [2012] 1 LNS 742.

[24] The use of the John Doe fiction still prevails in other common law jurisdictions. The use of "John Doe" had, in some instances, become more "functional" than a mere fiction. Thus, there are cases where the pleading

would refer to the intended or prospective but yet unidentified defendants as "John/Jane Doe." It was reasonably likely that the discovery process in an action filed in court will reveal the identity of the unknown defendant.

[25] An example of this would be the United States Supreme Court case of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* 1971 U.S Lexis 23. In this case the use of "Six Unknown Named Agents …" would have its equivalent in "John Doe." The court in *Bivens* case recognised a cause of action against federal law enforcement agents who violated Bivens constitutional rights. Bivens' complaint document did not name the specific Federal Agents allegedly involved in his unconstitutional arrest because he could not identify them. But the District Court, through Bivens' request for discovery, ordered service against the agents indicated by the United States Attorney's records to have been involved in Bivens' arrest. Thus, Bivens was able to discover the identities of those involved in his arrest through the suit filed in court.

[26] Comparable with the present case, the plaintiff herein had to apply for discovery under s. 36 Government Proceedings Act 1956 to obtain the names of the doctors. It was only after this that the defendants through the Jabatan Peguam Negara by way of their letter dated 8 November 2018 had decided to reveal the names of the five doctors. The plaintiff therefore had to bring the "John/Jane Doe" fiction and commence this action in order to obtain the identity of the doctors. The relevant part of s. 36 reads:

> Discovery
>
> (1) Subject to and in accordance with rules of court-
>
> (a) in any civil proceedings in the High Court or a subordinate Court to which the Government is a party, the Government **may be required by the court to make discovery of documents and produce documents for inspection**; and
>
> (b) in any such proceedings as aforesaid, the Government may be required by the court to answer interrogatories ...
>
> (emphasis added)

[27] I can safely say that the use of "John Doe" in its functional sense had been used in Malaysia in previous cases especially those involving death in custody. See for example *Selvamoney Suppiah Selvamoney v. John Doe dan lain lain* (AA-21NCVC-3-03/2017). In the circumstances of the present case, I therefore find that the use of "John Doe" for the first to the fifth defendants is proper and correct.

Findings Of The Court

[28] At the onset this court observes that this action was filed on 2 April 2018. The cause of action arose on the date of the first operation 2 April 2015. According to the Public Authorities Protection Act 1948, the time

frame for bringing an action against any public authority is 36 months. Based on the facts of this case, the 36 months would have ended on the 1 April 2018 which falls on a Sunday. By virtue of s. 54(1)(b) of the Interpretation Acts 1948 and 1967 (Consolidated And Revised 1989) if the last day falls on a public holiday then the following day would be the last day. It was therefore not disputed that the writ and statement of claim was filed within the 36 months. Counsel for the plaintiff stated that the action was filed at the very last moment because there were efforts to settle the matter. This was not disputed by learned counsel for the defendants.

[29] Referring to the decision of the learned SCJ, I find the case cited by the learned SCJ namely *Selvaraju Ponniah supra* the initial action itself was filed out of time. In contrast with this present case, the writ and statement of claim was filed within time. It was only the proposed amendments which were said to have been filed out of time. Further, *Selvaraju Ponniah* did not deal with a "John Doe" situation. I therefore am of the view that the case of *Selvaraju Ponniah* can be distinguished on its facts.

[30] As for the point that the first to fifth defendants not being named in accordance with ss. 5 and 6 of the Government Proceedings Act 1956, I am of the view the whole purpose of the application to amend the statement of claim by substituting the "John/Jane Doe" with the proper recently discovered identity of the doctors was to ensure that the plaintiff does not run foul to ss. 5 and 6 of the Government Proceedings Act 1956. I find that the case relied upon by the learned SCJ namely *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors supra* was not in relation to an application such as the present involving the fiction "John Doe". The amendments sought herein are primarily to substitute with their actual names the defendants that had already been described and identified in the statement of claim to comply with the statutory requirement on the naming of parties.

[31] Having found that "John/Jane Doe was properly and correctly used in this case, I further find that the first to the fifth defendants were also specifically described in the statement of claim at paras. 2, 6 and 7. This would give the prospective defendants adequate notice and knowledge of their intended involvement in the suit. This is therefore not a case where the identity of the doctors cannot be discovered. They were identifiable and discoverable. Unfortunately the "post-operative note " supplied by the defendants to the plaintiff were wholly inadequate to discover who they were and the role they played in the operation.

[32] In the circumstances of this case, it would not be unreasonable for this court to conclude that the sixth to eighth defendants had all the means and resources to determine the names of the doctors involved. The prospective defendants too would have had notice of the fact that they were the "John/Jane Doe" referred to in relation to the suit. There is even affidavit evidence that the second proposed defendant and her unit head had apologised to the

plaintiff. In contrast, the only indication given to the plaintiff as to the identity of these doctors was the "post-operative note " which was devoid of essential details. This court also observes that even the statement of defence did not name defendant 1 to 5 when it could have.

[33] The identifiability of a prospective unnamed defendant as contrasted with one that is unidentifiable and would forever remain anonymous was recently considered in the context of an accident insurance claim by the UK Supreme Court case of *Cameron (Respondent) v. Liverpool Victoria Insurance Co Ltd (Appellant)* [2019] 2 All ER (Comm) 467 where it was observed:

> 13. In approaching this question, it is necessary to distinguish between two kinds of case in which the defendant cannot be named, to which different considerations apply. The first category comprises anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location, although they cannot be named. The second category comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction is that in the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the claim form, whereas in the second category it is not.

[34] The amendment sought by the plaintiff was to name the prospective defendants that were originally identified with reasonable specificness in the statement of claim. It involves only the modification by substituting the fiction "John/Jane Doe" with the names of the first to fifth defendants which had already been specified and described in the statement of claim. In essence it was only to replace the name, not the party, through the medium of "John/Jane Doe". It is also observed that the amendments do not entail any change to the body of the statement of claim.

[35] Of significance is that the letter dated 8 November 2018 from the Jabatan Peguam Negara exhibited in the affidavit in support of the application expressly states the uncontroverted fact that the prospective first to fifth defendants were directly involved ("terlibat langsung") in the operation on the plaintiff. I therefore do not find any prejudice to the defendants if this amendment was to be allowed. On the other hand, the plaintiff would be unjustly deprived of presenting its case on its merits if the application is disallowed.

[36] The fact that the defendants would have all the resources to determine who the doctors who operated the plaintiff were and therefore easily identifiable. The prospective defendants were adequately described as those who had operated on the plaintiff in the statement of claim and the amendments were merely to do a "modification" to "substitute" the names

of the parties. I find that the amendment sought is in the nature of those described by Brandon LJ in the House of Lords' case *Liff v. Peasley & Anor* [1980] 1 All ER 623 where he stated:

> There is no reason to quarrel with the general proposition that an amendment of a writ or a pleading relates back to the original date of the document amended, as stated by Lord Collins MR in *Sneade v. Wotherton Barytes and Lead Mining Co* [1904] 1 KB 295. This seems to me to be an entirely sensible proposition *so long as the amendment concerned does not involve the addition of a new party, either as plaintiff or defendant, or the raising of a new cause of action, but involves only the modification, by addition, deletion or substitution, of pleas or averments made between existing parties in respect of a cause or causes of action already raised.* Where, however, the amendment concerned involves the addition of a new party or the raising of a new cause of action, it appears to me to be unrealistic and contrary to the common sense of the matter to treat it as relating back in the same way.
>
> (emphasis added)

[37] I consequently find that the amendments only entail the substitution of the names of the parties. It does not involve the addition of a new party or the raising of a new cause of action. I also find the application to amend *bona fide*. That being so the amendment would also relate back to the filing of the writ and statement of claim.

Conclusion

[38] I feel that the amendment is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon on its merits. In the upshot, I allow the appeal.